IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule (32) (b)

Description of Case

Crl. Appeal No. 987 of 2001

Date of decision:- 16.05.2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date:- 16.05.2006

Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 987 of 2001
(Old No. 1493 of 1983)

Khim Singh
S/o Lom Singh
R/o Village Talli Kharhi
Police Station Baltira,
District – Pithoragarh .....Appellant

Versus

State of Uttaranchal ....Respondent

Sri B.S. Adhikari, learned Amicus Curiae for the appellant.
Sr. A. Rab, Addl. G.A. and Sri Sudhir Kumar, learned A.G.A. for the State

Hon'ble J.C.S. Rawat, J.

1. This is an appeal against the judgment and order dated 17.06.1983 passed by Sri T.N. Saxena the then Sessions Judge, Pithoragarh in Sessions Trial No. 3 of 1982 State Vs. Khim Singh and another, convicting the appellant-Khim Singh and sentencing him to undergo 5 years R.I. u/s 436 I.P.C. & 5 years R.I. U/S 307 I.P.C. It was further directed that both the sentences would run concurrently. Feeling aggrieved by the said judgment and order, the present appeal has been preferred.

2. The prosecution story, in nutshell, is that the appellant resides in village Talli Kharani and the reporter Tika Ram-PW3 and Nityanand-PW2 are also reside in the same village. It was averred in the prosecution case that on 20.01.1981, there was a scuffle in between Khim Singh and Tika Ram the informer in the village Bhingrara. Thereafter the quarrel ended and the parties went to their house. On the next day, i.e. on 21.01.1981, the appellant came to the house of Tika Ram-informer and again assaulted to him. This incident took place in the morning hours of 21.01.1981. Nityanand saw this physical grappling in between the reporter-Tika Ram and the appellant-Khim Singh. He himself intervened in the said grappling.

The appellant also challenged him and torn his waist coat. Thereafter, some of the villagers were called and a panchayat was convened but the appellant did not abide by the decision of the panchayat rather warn to kill and set fire to the house of the complainant. When the matter was not settled in the panchayat, Tika Ram-informer having been frightened by the conduct of the appellant called Shib Dutt and Tika Ram Panguria to stay in the night in his house. Both of them came to the house of the informer Tika Ram at about 8:00 or 9:00 pm. on 21.01.1981. When both of them reached at the door of the informer-Tika Ram, two person, namely, Bachay Singh and Jodh Singh of village Talli Kharani came to the house of the informer-Tika Ram and knocked the door of the reporter. The reporter-Tika Ram did not open the door on account of fear. While knocking the door, Tika Ram Panguria and Shib Datt Pangurai were also in the house of informer. Bachay Singh and Jodh Singh offered them for getting the compromise but they told them that it had become night and the talks of the compromise would be resumed in the next morning. Both Bachay Singh and Jodh Singh returned to their house. It was the prosecution case that at about 3:00 am. in the morning of intervening night of 21/22.01.1981, PW1-Shib Datt and Tika Ram-PW3 heard some noises from behind the house and they came out from their house and saw that the appellant Khim Singh was igniting fire with a match stick at the hay roof of Nityanand-PW2. A hue and cry was made by the residents of the nearby houses and they ran out for safety of the complainant party. None got injury or burn injury but the prosecution had stated that the entire house was burnt and a loss of Rs. 1 lac occurred on account of so many article having been gutted to fire. The matter was reported to the Patti Patwari on the next day at about 1:00 am. The distance between the patti patwari headquarter and the place of incident is about 8 kms. as has been shown in the F.I.R. itself. The patwari started the investigation. Meanwhile, the application was given by the reporter-Tika Ram to the D.M. on 22.01.1981 stating therein about the incident and he also given some meticulous details about the incident how it

occurred. The record also reveals that the reporter-Tika Ram, informer had also given the complaint to the D.M. again on 05.02.1981 alleging therein that Patwari is not taking interest in the investigation. On the other hand, the Patwari investigated the matter and submitted the chargesheet against the appellant and one Lal Singh.

3. The trial court framed the charges u/s 436 r/w 34 I.P.C. and u/s 307 r/w 34 I.P.C. against the appellant as well as the Lal Singh. Both the accused denied the charges and claimed trial.

4. The prosecution in support of his case examined Shib Datt-PW1 who is said to be the resident of same village and he had also stated that his house is about 60-70 yards from the house of the informer-Tika Ram. He reached at the spot when he heard the noise of the reporter and other persons. He is said to be the independent eyewitness of the said incident. PW2-Nityanand who is the resident of same house where the fire was set and he had also stated that he saw the igniting the fire by the matchstick to the hay roof of the house in question. PW3-Tika Ram is the reporter of this case and he is also the eyewitness of the incident. PW4-Bhupal Singh is the photographer who had taken the photograph of the place of the occurrence. PW5-Shib Datt is the father of Tika Ram Panguria. When the incident took place in the morning of 21.01.1981, the informer was under the fear so he called the said witnesses from other village. He reached in the house of the reporter at about 8:00 or 9:00 pm in the night when the incident took place and he was inside the house in question at the time of the incident. He is said to be the independent witness of the incident. PW6-Dev Singh Basera who is the Patwari who had investigated the case and submitted the chargesheet after the investigation.

5. The appellant was examined u/s 313 Cr.P.C. and he had denied the entire prosecution evidence and he had stated that he had

been falsely implicated on account of the enmity. But at one place he had submitted that some heated exchange took place between the appellant and the Nityanand-PW2. No oral and documentary evidence has been filed in support of the defence.

6. After appraisal of the evidence, the learned Sessions Judge had found the appellant guilty u/s 307 and 436 I.P.C. and sentenced as indicted above. However, the learned Sessions Judge acquitted the other co-accused Lal Singh.

7. It needs to be mentioned here that it is not disputed that the fire took place in the house of the complainant party. The evidence of PW1-Shib Datt and PW2-Nityanand, PW3-Tika Ram and Shib Datt-PW5 reveals that the fire took place in the house of the informant and Nityanand and it burnt into ashes. It is also not disputed that the incident took place on the intervening night of 21/22.01.1981. It is also in the evidence of Patwari Dev Singh Basera-PW6 that he visited the place of occurrence and found that there were marks of burn at the spot and the house had gutted fire. The evidence of the Investigating Officer with regard to the fact what he had seen by his own eyes is relevant. In view of the above, it is revealed that the house of the complainant party burnt to the ashes on the date of incident.

8. Now I have to determine as to who is the author of the offence and who ignited the fire to the house of the complainant party. The prosecution had adduced the evidence that on 21.01.1981, the appellant-Khim Singh took up quarrel with the informer Tika Ram in village Bhingrara and thereafter again the appellant came to the house of the informer on 21.01.1981 in the morning hours and started to beat Tika Ram-PW3. Thereafter a panchayat was convened and the appellant did not agree with the advise of the panchayat and he threatened the complainant party to the dire consequences and also said that he would ignite the fire to their dwellings. The reporter-Tika

Ram having been frightened by the appellant statement called Shib Datt Panguria from other village to stay in the night in his house. Again two persons Bachay Singh and Jodh Singh came to the house of the informer in the night at about 8:00 or 9:00 pm to settle the dispute but the complainant party already stated that it had been late night and the talks of the compromise would be resumed in the next morning, if any. Thereafter, Bachay Singh and Jodh Singh left the house of the complainant party and they returned to their house. Nityanand-PW2 and Tika Ram-PW3 went to their room and slept there. Both the witnesses had stated at about 3:00 am they heard some noise from behind their houses and they came out and saw that the appellant Khim Singh was setting fire with the matchstick at the hay roof of the complainant party. When they saw the appellant to ignite the fire, they made a noise and the residents of the nearby house of the complainant party reached at the spot. None got the injuries in the said incident. The household goods of the complainant party were destroyed due to the fire and loss was assessed by the prosecution at about Rs. 1 lac. The prosecution has also adduced the independent witness of the said incident, i.e. Shib Datt-PW1 who is the resident of the same village and his house is situated at about 60-70 yards from the house of the complainant. Shib Datt-PW1 is son of Tika Ram who reached at the spot. It is also stated by Shib Datt-PW1, on hearing alarm from the complainant party, his son went immediately from his house to the house of the complainant. When he reached to the house of the complainant, he saw the house was burning. It was further stated in the evidence that Tika Ram-reporter immediately informed him at the spot that the appellant had set fire to his house. The prosecution has also adduced the evidence of PW5-Shib Datt Panguria who was also sleeping inside the house. When the informer Tika Ram-PW3 and Nityanand-PW2 came out from the house they raised alarm of the fire, he also came out from the house and found that the house was in high flame. He had also stated that he had not seen anybody igniting the fire with the matchstick. He also stated that he had not seen the appellant running from the place

of occurrence. He also stated that the complainant party stated that the appellant had set fire to their house. The prosecution also proved the injuries report Ex.Ka-4 which relates to the incident of two days back and the said injuries report had been admitted by the defence.

9. Learned counsel for the appellant contended that the presence of Nityanand-PW2 is doubtful at the spot. He further contended that the F.I.R. was lodged on 22.01.1981 and it did not indicate that Nityandnad-PW2 was present in the house. He further contended that Tika Ram-PW3, reporter had given the report to the District Magistrate and that report also did not contain the name of the Nityanand-PW2 being present at the spot. Both the reports had been given on the same day either to the Investigating Officer or to the District Magistrate and these reports did not mention the name of Nityanand to be present at the spot. Merely non-mentioned of the names of the witnesses in the said report is not fatal to the prosecution. Evidence of the person whose name did not figure in the F.I.R. does not perforce become suspect. There is no hard and fast rule that the names of all the witnesses, more particularly eye witnesses should be indicated in the F.I.R. It has been observed in **Shri Bhagwan Vs. State of Rajasthan 2001 SCC (Cr.) p/1095,** mere non-mention of the name of the eyewitness does not render the prosecution version fragile. Mental condition of the reporter whose entire home had gutted fire and he had come on road would have get disturbed. The statement of Nityanand was recorded on the next day by the patwari. The F.I.R. is only a document by which the law sets into motion. It does not require that all the detail should be mentioned in the F.I.R. Thus the contention of the learned counsel for the appellant is not tenable.

10. Learned counsel for the appellant further contended that there are contradictions in the testimony of the witnesses of Nityanand-PW2 and Tika Ram-PW3. It was pointed out by the learned counsel for the appellant that Tika Ram-PW3 had stated in his cross

examination that he called the persons from other village for his safety. Tika Ram and Shib Dutt Punguria came from village Bhingrara to the house of Nityanand-PW2 at about 9:00 pm. It was further pointed out that Nityanand-PW2 had stated that Tika Ram and Shib Datt Panguria stayed in his home during the night. It was further pointed out the other witness says that Tika Ram and Shib Dutt Panguria stayed in his house. He pointed out that there is discrepancy with regard to their stay in the night. Shib Datt-PW1 had stated that he stayed in his home whereas Tika Ram-PW3 had stated that he stayed in his house. It is pertinent to mention here that there was one house in which Tika Ram-PW3 and Nityanand-PW2 resided. It is also in the evidence that there was one house in which four families reside in separate compartment. It is well settled position of law that when the witness appears before the court discrepancies are bound to occur in the truthful testimony of the witnesses. There are bound to be some discrepancies between the narrations of the different witnesses when they speak in details. Unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason should not render the evidence of the eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate or otherwise acceptable evidence. One hardly does not come across the witness whose evidence does not contain some exaggeration or embellishment or discrepancies. The court has to remove the chaff from the grain and find out the truth from the testimony of the witnesses. A witness may not stand the test of cross examination which may some times because he is bucolic person and is not able to understand the question put to him by the skillful cross-examiner and at times the witness remain under the stress of cross-examination. If the witness is rustic and illiterate person certain answers are snatched from him by the skillful cross examiner. When a rustic or illiterate witness faces an astute lawyer, there is bound to imbalance and minor

discrepancy has to be ignored. In the instant case, the cross examination had tried to confuse the witnesses. He had tried to confuse the witnesses with regard to the house of the witnesses and their separate apartments. There was a big house containing 4 apartments of different witnesses. One witness had asked that aforesaid witnesses Shib Dutt and Tika Ram Panguria stayed in the apartment of Nityanand which is a part of house whereas the other witness was asked that he stayed in the house of other witness. Thus I do not find any force in the argument of the defence.

11. Learned counsel for the appellant further contended that Tika Ram-PW3 had stated in his evidence that Shib Datt-PW1 had seen igniting fire in the house in question. It was pointed out that Shib Datt-PW1 had stated that he did not seen to ignite the fire in the house in question. A person can tell what he saw at the time of incident. If he is asked what the other person saw though he may be standing, how he can assume that the things had been seen by the other person. At this juncture, I would like to mention that hypothetical question was put to the witness what the other saw at the time of the incident. In the instant case Tika Ram-PW3 could not say what Shib Datt-PW5 had seen by his eyes. Thus the contention of the learned counsel for the appellant is not tenable. The contradiction which has been put forward by the learned counsel for the appellant did not affect the genesis of the incident.

12. The prosecution also led the evidence to the fact that on 20.01.1981 before the occurrence, a quarrel took place in between the appellant and Tika Ram-informer. It was also stated in the evidence that the appellant caused beating to the reporter-Tika Ram-PW3 on 20.01.1981 in the morning and altercation took place in between them. The prosecution has also produced the injury report Ex. Ka-4. It also supports the version of the complainant that he received the injuries. The informer was medically examined by the doctor on 22.01.1981 at 4:00 p.m. The duration of the injuries were

about two days old in the medical certificate Ex.-Ka.4 This report had been admitted by the appellant. It is also in the evidence that panchayat was convened to settle the matter but in spite of the efforts made in the panchayat to amicably settle down the matter, no success could be achieved. It is also in the evidence that the appellant-Khim Singh started giving threats to kill the informer-Tika Ram and set fire his house. When the situation took the ugly turn, the informer-Tika Ram sent message to the other person to come to his safety in the night hours. The evidence of witnesses Nityanand-PW2 and Tika Ram-PW3 are quite convincing and nothing could be elicited from their evidence to disbelieve about the earlier incident which lead to cause the said incident.

13. It was further contended on behalf of the learned counsel for the appellant that the said fire was accidental fire. The suggestion has been put to Shib Datt-PW5 that two times earlier also the house of the complainant gutted fire. However, this suggestion of the appellant was denied by the prosecution witnesses. He had further contended that it was a winter season and the people used to keep their *Angethi* covered by the ashes to warm the room inside their house. It was pointed out that such fire would have spread over the house and it would have burnt the entire house. The said suggestion has been denied by all the prosecution witnesses. The contention of the learned counsel for the appellant did not find any support from any circumstance arising from the record. He had not shown any such circumstances by which said type of accidental fire could have broken out. He had not put any such question to the Investigating officer by which it could be ascertained as to whether it was accidental fire or it was a deliberate fire. The accidental fire could have been ascertained if the circumstances at the spot would have been existed there which could have lead an inference that it was accidental fire. Merely to put a suggestion is not sufficient to substantiate his argument. As against this, the prosecution has led the evidence that the fire was ignited by the appellant.

14. Learned counsel for the appellant further contended that the cross examination of the prosecution witnesses reveals that there was no motive to set fire to the house of the complainant. He had further pointed out that the appellant was Sabhapati of the village and he had right to recommend tress to the residents of the village. It was also pointed out that the Sabhapati had given his recommendation to cut the said trees in favour of Narotam and the informant was aggrieved by the said recommendation. He further pointed out that the informer was aggrieved by the appellant and there was sufficient reason to falsely implicate the appellant. The appellant had no cause to cause damage to the informer. Learned A.G.A. refuted the contention and it was contended that a scuffle took place with the appellant and it was said to the reporter-Tika Ram-PW3 that the appellant had recommended the trees in favour of Narotam and the case of the reporter had not been recommended. Thereupon scuffle took place between the parties prior to the present incident. Perusal of the evidence reveals that there is a chain of incident from 21.01.1981 to 22.01.1981 and it is also credible and cogent evidence that a panchayat was convened where the appellant threatened to cause the injuries to the reporter Tika Ram-PW3 and to set his house to fire. In view of the above facts and circumstances, there is sufficient evidence of motive to ignite the house of the complainant.

15. It was further contended on behalf of the learned counsel for the appellant that Shib Datt-PW1 had stated in his evidence that he had not seen the appellant igniting the fire. He had also pointed out that the evidence of Shib Datt-PW5 who had stated that they were sleeping inside the house when the fire was ignited. When hue and cry was made by the complainant and Nityanand-PW2, then they came out and saw the flames were coming out from the roof of the house. Perusal of the evidence reveals that both the witnesses had stated that they did to see the appellant to ignite the fire. They have stated that they reached immediately after the incident and the

complainant had stated that the appellant had ignited the fire to the house and they saw high flames of the fire in the hay roof of the complainant. The evidence of these witnesses are relevant as it being a part of *re juste* and the evidence is admissible and relevant. They have been cross-examined in length but nothing could be elicited from their testimony. It is also pertinent that the Investigating Officer, Devsingh Basera-PW6 reached at the spot on the next day and he himself saw the flames were still coming from the home. None would like to hurt his dwelling home to implicate the others.

16. Learned counsel for the appellant further contended that the appellant had been convicted u/s 307 I.P.C. It was pointed out by the learned counsel for the appellant that the case u/s 307 I.P.C. is not made out. He further contended that there is no evidence that the fire was ignited deliberately to kill the complainant. Learned Sessions Judge while convicting the appellant had observed that there were specific allegations and there was evidence that the appellant set fire to the house of the complainant. It was a deliberate act of the appellant. He had further observed that while setting fire to the dwelling house, the appellant must have knowledge and must have intended, if any person inside the house is engulfed into the flames, he would die. The learned A.G.A. could not support this findings before me. The perusal of the record reveals that there is no such evidence on record which reveals that the fire was ignited to kill the complainant and it cannot be inferred as has been stated by the learned Sessions Judge that it was caused to kill the complainant. I am of the view that the finding of the learned Sessions Judge is erroneous on this point.

17. After examining the entire evidence on record, I am of the view that the prosecution had established the guilt against the appellant-Khim Singh u/s 436 I.P.C. beyond reasonable doubt. I am completely in agreement with the findings recorded by the learned Sessions Judge holding the appellant guilty u/s 436 I.P.C. As

regards the charge u/s 307 I.P.C. is concerned, the prosecution could not establish the guilt against the appellant, as such, the appellant is entitled to be acquitted on that score.

18. In view of the above, the appeal is partly allowed. The appellant-Khim Singh is found guilty u/s 436 I.P.C. The conviction and sentence passed against the appellant u/s 436 I.P.C. is confirmed. The appellant is acquitted from the charges levelled against him u/s 307 I.P.C.

19. Let the lower court record be sent back to the court concerned for compliance. Compliance report be submitted within three months.

(J.C.S. Rawat, J.)

16th May, 2006
Shiv